IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A.No.1387 of 2005
Date of Decision : 30.10.2007

Lakhi Ram .....Appellant

versus

Hawa Singh and others .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present: Mr.Vivek Khatri, Advocate for the appellant.
Mr.Davinder Punia, Advocate for respondent No.1.
Mr.Parveen Hans, Advocate for respondent No.3.

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JUDGMENT

HEMANT GUPTA, J.

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below whereby suit for injunction was partly dismissed except in respect of the area marked as ABCD, as shown in the site plan exhibit P-1.

The plaintiff-appellant filed a suit for permanent injunction alleging therein that he is owner in possession of the property measuring 850 square yards. On 380 square yards, the plaintiff has constructed his residential house and three shops, whereas the remaining 470 square yards is lying open. A boundary wall has been constructed by the plaintiff over it and there is a Shisham tree. The open land is being used by the plaintiff for tethering his buffalos and making dung cakes etc. and thus, the plaintiff is entitled to protect his possession over such land.

Initially, the suit was filed against Hawa Singh-defendant No.1 who is none else, but the father in-law of the plaintiff. Defendant No.2 is Dharam Chand who has sold the property to defendant No.3-Gian Chand

vide registered Sale deed dated 5.11.1990. Defendant No.3 was impleaded as additional defendant vide order dated 5.8.1996 who sold a part of the land to Hawa Singh vide sale deed dated 19.12.1991.

Defendant Nos.1 & 2 did not contest the suit. It was defendant No.3 who has contested the suit and averred that he is owner in possession of the land measuring 240 square yards shown by letters A B C D in the site plan attached with the written statement filed by defendant No.3 and that the plaintiff has no concern with the same. Adjacent to the plot of defendant No.3 is the plot of Hawa Singh and there is 12 feet street towards west and across the street towards west is the property of the plaintiff-Lakhi Ram. It was denied that the plaintiff is owner in possession of the land measuring 850 square yards and the Shisham tree standing on the land, belongs to defendant No.3 and that he has raised boundary wall and constructed two rooms and installed iron gate in his plot. It was also pleaded that the suit land comprised in Khasra No.1099/1/1, measuring one kanal was earlier owned and possession by M/s Apex India, Hansi. The said land was purchased by Dharam Chand and Suraj Parkash in equal shares vide registered sale deed dated 8.5.1984. Suraj Parkash sold his share of the land to Purshotam Lal, Rajinder Kumar and Subhash Chander vide registered sale deed dated 2.5.1984. The vendees from Suraj Parkash, namely Subhash Chander, Purshotam Lal and Rajinder Kumar further sold the said land to defendant No.3-Gian Chand vide registered sale deed dated 29.9.1992. Whereas, Dharam Chand sold his land to defendant No.3 vide registered sale deed dated 5.11.1990. Out of the land purchased, defendant No.3 sold the land in favour of defendant No.1-Hawa Singh vide registered sale deed dated 19.12.1991.

Primarily, the Courts below have considered the report of the Local Commissioner dated 28.10.1992, Exhibit P-4 and the report dated 26.11.1992 to return a finding that in fact the open area shown in the site plan attached by the plaintiff is further bifurcated into two parts; one part is under the ownership of Hawa Singh-defendant No.1 and another part is under the ownership of defendant No.3. On the basis of said finding recorded, both the Courts below have decreed the suit in respect of construction raised by the plaintiff over the area measuring 380 square yards.

The plaintiff has not produced any document in respect of his ownership over the land measuring 850 square yards. It is alleged by the plaintiff that he is owner in possession of the same since long. However, it is admitted by the plaintiff, appearing as PW-1, that the land in dispute bears Khasra No.1099/1/1. Exhibit D-17, jamabandi shows that the said land is owned and possessed by M/s Apex India. The same was sold to Dharam Chand and Suraj Parkash vide registered sale deed dated 8.5.1979, Exhibit D-12. Exhibit D-14 to D-16 are the sale deeds dated 2.5.1984 executed by Suraj Parkash in favour of Subhash Chander, Purshotam Lal and Rajinder Kumar. The aforesaid Subhash Chander, Purshotam Lal and Rajinder Kumar sold the land measuring 8 marlas to Gian Chand-defendant No.3. Dharam Chand also sold his land to Gian Chand-defendant No.3. Gian Chand-defendant No.3 sold the plot measuring 240 square yards to Hawa Singh-defendant No.1 vide registered sale deed dated 19.12.1991, Exhibit P-14. Though the stand of the plaintiff is that Hawa Singh never took possession of the land in dispute, but the suggestion given to Gian Chand was that two rooms and the Shisham tree standing on the land

belongs to Hawa Singh. Thus, the Courts held that the plaintiff is in possession of the portion marked by the learned trial Court as A B C & D measuring 380 square yards only. On the basis of the report of the Local Commissioner dated 28.10.1992, Exhibit P-4, and the site plan prepared by another Local Commissioner, filed alongwith his report dated 24.11.1992, the learned Courts below found that the portion E F B D in the site plan dated 24.11.1992 and the area XXIFG is in possession of defendant No.3 out of open space of 470 square yards. Whereas, the remaining unconstructed portion is that of Hawa Singh-defendant No.1.

Learned counsel for the appellant has vehemently argued that the sale deeds produced by the defendants does not prove the delivery of possession of the land to defendant No.3 as none of the vendors of defendant No.3 was in possession of the property in question. The said argument raised by learned counsel for the appellant is not tenable. The open space measuring 470 square yards is alleged to be used by the plaintiff for tethering of cattle and for preparation of dung cakes etc. Such activities even if carried out, do not show the plaintiff in legal possession of the same. Such stand is only of user of the open space adjoining to his house. Defendant No.3 is proved to have purchased the property, which was once owned by M/s Apex India Limited. The fact that property in dispute is part of Khasra No.1099/1/1 is not disputed by the plaintiff. Thus, the possession of the open area would go with the title of the land. Therefore, the Courts below have rightly held the defendant No.3 to be owner in possession of the same. Such possession is supported by the reports of the Local Commissioners who have found a wall constructed in the open portion bifurcates the plot into two portions; one portion is in possession of

defendant No.3 as owner, whereas the other portion is in possession of Hawa Singh-defendant No.1, father in-law of the plaintiff as the said plot has been sold by defendant No.3 to him alone.

Thus, it cannot be said that the findings recorded by the Courts below in respect of possession of the open area can be said to be suffering from any patent illegality or irregularity which may give rise to any substantial question of law for consideration of this Court in second appeal. The arguments raised by learned counsel for the appellant are, in fact, in the realm of re-appreciation of evidence. Having gone through the record, I do not find that a different view is possible then what has been taken by the Courts below.

Consequently, I do not find that any substantial question of law arises in the present second appeal for consideration of this Court. The Appeal stands dismissed.

30-10-2007 **(HEMANT GUPTA)**
*mohinder **JUDGE**